

No. 14506

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United States  
Court of Appeals  
for the Ninth Circuit

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ROBERT L. HALL,

Appellant,

vs.

COPCO PACIFIC, LTD., a Delaware Corporation,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Plaintiff and Appellant.

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220 Bush Street,  
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Attorneys for Defendant and Appellee.





United States District Court, Southern Division,  
Northern District of California

No. 33225

ROBERT L. HALL,

Plaintiff,

vs.

COPCO PACIFIC, LTD., a Delaware Corporation,

Defendant.

FIRST AMENDED COMPLAINT FOR  
DAMAGES—PERSONAL INJURIES

Plaintiff for his complaint alleges:

I.

Plaintiff is a citizen and resident of the State of Washington; defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and admitted to do, and is doing, business in the State of California with place of business in the City of San Carlos, County of San Mateo, State of California; the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars.

II.

At all times hereinafter mentioned plaintiff was employed by defendant in the State of Oregon as a machinery salesman.

III.

That at all times hereinafter mentioned defendant was in default under the Workmen's Compensation Law of the State of Oregon.

## IV.

That on the 10th day of December, 1951, defendants supplied to plaintiff a motor vehicle and directed him to transport certain machinery loaded thereon to a customer in the State of Oregon; that contrary to and in violation of Section 102-1601, Oregon Compiled Laws Annotated, defendant failed and neglected to load and secure said machinery as therein required.

## V.

That while plaintiff was transporting said machinery in said motor vehicle in accordance with defendant's instructions, by reason of defendant's failure to comply with the above Section 102-1601, Oregon Compiled Laws Annotated, said machinery moved or shifted and caused plaintiff to lose control of said motor vehicle as the result of which there was a collision in which plaintiff was injured;

## VI.

That said employment involved risk and danger within the meaning of said Section 102-1601, Oregon Compiled Laws Annotated.

## VII.

That by reason of the premises plaintiff sustained severe injuries, including, but not limited to, a fracture of his right thigh bone by reason of which he suffered great physical and mental pain and anguish and possible physical impairment and disability of a permanent nature, to his damage in the sum of One Hundred and Fifty Thousand (\$150,000.00) Dollars.

## VIII.

Prior to his said injuries plaintiff was a strong, able-bodied man capable of earning and earning the sum of Four Hundred (\$400.00) Dollars in his employment as salesman; since his said injuries and by reason thereof, plaintiff has been unable to pursue any gainful employment and will continue to be unable to do so for an indefinite period of time in the future. Plaintiff has suffered a loss of wages in the approximate amount of Ninety-six Hundred (\$9,600.00) Dollars and will continue to suffer such loss in the future and has incurred in necessary treatment of his aforesaid injuries, medical, surgical, hospital and nursing expenses in the approximate amount of Six Thousand (\$6,000.00) Dollars and will continue to incur such expense in the future.

For a Second Cause of Action, Plaintiff Alleges:

## IX.

Plaintiff repleads paragraphs I, II, III, IV, V, VII and VIII hereof and by this reference incorporates the same herein as though at this point set forth in full.

## X.

That said employment constitutes a hazardous occupation within the meaning of Sections 102-1701 to 102-1785, both inclusive, Oregon Compiled Laws Annotated.

## XI.

That defendants' negligence in the premises was the proximate cause of plaintiff's injuries and dam-

ages as aforesaid and defendant is liable therefor as provided in said Sections 102-1701 to 102-1785, both inclusive, Oregon Compiled Laws Annotated.

Wherefore, plaintiff prays judgment against defendant in the sum of \$165,600.00 plus whatever further damages he may suffer in the future as hereinbefore alleged, for his costs of action herein incurred and for such other and further relief as to the Court may seem meet and proper in the premises.

P. H. McCARTHY, JR.,

F. NASON O'HARA,

HERBERT S. JOHNSON,

By /s/ HERBERT S. JOHNSON,  
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed January 12, 1954.

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[Title of District Court and Cause.]

ANSWER TO FIRST AMENDED COMPLAINT  
FOR DAMAGES, PERSONAL INJURIES

First Defense

Plaintiff has failed to state a claim upon which relief can be granted.

Second Defense

Plaintiff's alleged cause of action against defendant is barred by the statute of limitations.

### Third Defense

Any injuries or damages suffered by plaintiff at the time and place referred to in his first amended complaint were proximately caused by his own negligence.

### Fourth Defense

Any risk or hazard connected with the work being performed by plaintiff for defendant at the time and place referred to in his first amended complaint was open, obvious and understood and appreciated by him and plaintiff assumed any such risk or danger.

### Fifth Defense

Plaintiff was in charge of the work and operation being performed at the time and place referred to in his first amended complaint, and if there was any failure to observe safety requirements, such failure was that of the plaintiff.

### Sixth Defense

Defendant admits the allegations of Paragraph I of plaintiff's first amended complaint and that plaintiff was employed by the defendant as a salesman, but denies the other allegations of plaintiff's first amended complaint generally and specifically and the whole thereof; defendant further denies the allegations of the second cause of action thereof generally and specifically and the whole thereof, except as hereinabove admitted, and denies that

plaintiff has been damaged in the sum of \$165,600.00 or in any other sum or sums at all.

Wherefore, defendant prays judgment herein.

Dated this 1st day of April, 1954.

KEITH, CREEDE &  
SEDGWICK,

/s/ FRANK J. CREEDE,

/s/ SCOTT CONLEY,

Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 7, 1954.

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[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT  
UNDER RULE 56(b)

The defendant moves the Court for summary judgment in its favor on the ground that the Statute of Limitations is a bar to the present action.

KEITH, CREEDE &  
SEDGWICK,

By /s/ SCOTT CONLEY,

Attorneys for Defendant.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY  
JUDGMENT UNDER RULE 56(b)

To P. H. McCarthy, Jr., F. Nason O'Hara and  
Herbert S. Johnson, Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motion on for hearing before this Court, at Room 276 of the Post Office Building, Seventh and Mission Streets, San Francisco, California, on the 24th day of May, 1954, at 9:30 o'clock a.m. of said day, or as soon thereafter as counsel can be heard.

KEITH, CREEDE &  
SEDGWICK,

By /s/ SCOTT CONLEY,  
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 7, 1954.

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[Title of District Court and Cause.]

ORDER

Motion for summary judgment on behalf of the defendant is hereby granted on the ground that the action is barred by Section 340.3 of the California Code of Civil Procedure.

Let defendant prepare judgment accordingly.

Dated: July 6, 1954.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed July 6, 1954.

In the District Court of the United States for the  
Northern District of California, Southern Division

No. 33225

ROBERT L. HALL,

Plaintiff,

vs.

COPCO PACIFIC, LTD., a Delaware Corporation,  
Defendant.

### JUDGMENT

Defendant's motion for summary judgment, having come on regularly for hearing, and the court having examined proofs offered by the parties, and being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed:

1. That defendant Copco Pacific, Ltd., a Delaware corporation, have judgment against plaintiff herein and that plaintiff's action be dismissed, each party to bear his own costs.

Dated: This 13th day of July, 1954.

/s/ O. D. HAMLIN,

United States District Court  
Judge.

Approved as to form as provided in Rule 5(d).  
Receipt of copy acknowledged.

[Endorsed]: Filed July 13, 1954.



[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that plaintiff, Robert L. Hall, above named, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order of July 6, 1954, granting defendant's Motion for Summary Judgment, and from the Judgment entered herein on the 14th day of July, 1954, and the whole thereof.

/s/ HERBERT S. JOHNSON,  
P. H. McCARTHY, JR.,  
F. NASON O'HARA,  
HERBERT S. JOHNSON,  
Attorneys for Appellant

[Endorsed]: Filed July 30, 1954.

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO  
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for both parties:

Complaint for damages.

First amended complaint for damages.

Answer to first amended complaint for damages.  
Motion for summary judgment.

Order.

Judgment.

Notice of appeal.

Cost bond on appeal.

Designation of contents of record on appeal.

Statement of points relied upon on appeal.

Designation of additional contents of record on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of September, 1954.

C. W. CALBREATH,

Clerk;

By /s/ WM. C. ROBB,

Deputy Clerk.

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[Endorsed]: No. 14506. United States Court of Appeals for the Ninth Circuit. Robert L. Hall, Appellant, vs. Copco Pacific, Ltd., a Delaware Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed September 7, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals,  
Ninth Circuit  
No. 14506

ROBERT L. HALL,

Plaintiff-Appellant,

vs.

COPCO PACIFIC, LTD., a Delaware Corporation,  
Defendant-Appellee.

STATEMENT OF POINTS RELIED  
UPON ON APPEAL

Robert L. Hall, plaintiff and appellant above named, states pursuant to Rule 75(d) of the Federal Rules of Civil Procedure that the following points will be relied upon on appeal from the order granting defendant's Motion for Summary Judgment and the Judgment entered herein:

1. The Court erred in granting defendant's Motion for Summary Judgment.
2. The Court erred in granting Judgment herein on defendant's Motion for Summary Judgment.

/s/ HERBERT S. JOHNSON,  
P. H. McCARTHY, JR.,  
F. NASON O'HARA,  
HERBERT S. JOHNSON,  
Attorneys for Plaintiff-  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed September 21, 1954.

